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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,523	09/12/2001	Brantley W. Coile	CISCP005C1	8750
7590	02/23/2004		EXAMINER	
Barton E. Showalter, Esq. Baker Botts L. L. P. 2001 Ross Avenue, Suite 600 Dallas, TX 75201-2980			BLAIR, DOUGLAS B	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/954,523

Applicant(s)

COILE ET AL.

Examiner

Douglas B Blair

Art Unit

2142

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 12 September 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-3,5 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5 and 22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Claims 1-3, 5, and 22 are currently pending in this application.

***Claim Objections***

2. Claim 1 is objected to because of the following informalities: there is a period before the end of the claim. Appropriate correction is required.

***Double Patenting***

3. Claims 1-3, 5 and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5 of U.S. Patent No. 6,317,775. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 22 of this application feature new limitations however these limitations are already present in claim 1 of U.S. Patent No. 6,317,775. For instance a limitation is added stating that the system is configured to monitor connections established between the plurality of servers and clients on the external network. Claim 1 of U.S. Patent No. 6,317,775 is monitoring response times of a number of connections in order to choose the best connection from a client to a server. A limitation is also added stating that the response time is based at least in part on response time data gathered at the system in the course of monitoring connections established between the plurality of servers and clients on the external network. Claim 1 of U.S. Patent No. 6,317,775 discussed a response time is based at least in part on response time data gathered at the system in the course of monitoring connections established between the plurality of servers and

Art Unit: 2142

clients on the external network. Claims 2-3 and 5 of this application are identical to claims 2-3 and 5 of U.S. Patent No. 6,317,775.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In the last line of claim 22, all of the servers have predicted response time so it is unclear how the server is selected. It is assumed that the term "best" was accidentally omitted in front of "predicted response time".

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2142

8. Claims 1-3, 5 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,774,660 to Brendel et al. in view of U.S. Patent Number 5,459,837 to Caccavale et al.

Brendel teaches a system for distributing connections from clients on an external network to a plurality of servers on an internal network, the system comprising:

a client interface to the external network the client interface being operative to receive and send packets to and from a remote client (Figure 4, element 10);

a server interface to the internal network, the server interface to the internal network, the server interface being operative to receive and send packets to and from a plurality of servers, the plurality of servers being operative to establish a connection with the remote client and the system being configured to monitor connections established between the plurality of server and clients on the external network (Figure 4, element 32);

and selecting server based on the load (col. 6, lines 8-58).

Brendel does not specifically show the use of the predicted responsiveness indicators and comparing and selecting the best server based on the indicators.

Caccavale teaches a plurality of predicted responsiveness indicators, each of the plurality of predicted response indicators being associated with at least one of the plurality of servers, the predicted responsiveness indicators being operative to predict the response time of each of the plurality of servers based at least in part on response time data gathered at the system in the course of monitoring connections established between the plurality of server and clients on the external network, the predicted responsiveness indicators also being stored within the system in a manner that the predicted responsiveness indicators may be accessed (col. 7, lines 1-20);

and a predicted responsiveness comparator which is operative to access and compare the predicted responsiveness indicators and to determine which servers from among the plurality of servers is associated with a predicted responsiveness indicator which measures a best response time, the predicted responsiveness comparator being further operative to select a pointer to a server which has a predicted responsiveness that is the best predicted responsiveness among the predicted responsiveness of the plurality of server (col. 4, lines 12-47);

whereby the server which has a predicted responsiveness which is the best predicted responsiveness is selected to handle the next connection from a client (col. 4, lines 35-47).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Brendel regarding the load balancing of connections with the teachings of Caccavale regarding predicting the responsiveness of connections because measuring responsiveness allows a system to more efficiently utilize network resources (Caccavale, col. 1, lines 31-47).

9. As to claim 2, Caccavale teaches a system wherein the predicted responsiveness indicators are periodically updated (col. 2, lines 37-45).

10. As to claim 3, Caccavale teaches a system wherein the predicted responsiveness indicators include the number of connections to each of the plurality of servers (col. 7, lines 1-20).

11. As to claim 5, Caccavale teaches a system wherein the predicted responsiveness indicators include the predicted response time of the plurality of servers (col. 7, lines 1-20).

12. As to claim 22, it features limitations rejected as part of claim 1 and therefore rejected for the same reasons as claim 1.

***Response to Arguments***

13. Applicant's arguments filed 3/11/2002 have been fully considered but they are not persuasive. The applicant argues that neither Brendel nor Caccavale teach predicting the response time of servers "based at least in part on response time data gathered at the system in the course of monitoring connections established between the plurality of servers and clients on the external network. However, Caccavale teaches this feature in col. 7, lines 1-20.

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B Blair whose telephone number is 703-305-5267. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on 703-305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/954,523  
Art Unit: 2142

Page 7

Douglas Blair  
February 12, 2004



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER